

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**TERESA CALVARUZO**  
Claimant

VS.

**FRITO-LAY, INC.**  
Respondent  
Self-Insured

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Docket No. 195,320

**ORDER**

Respondent filed a request for Appeals Board review of a December 21, 1995 preliminary hearing Order entered by Assistant Director Brad Avery.

**ISSUES**

The Assistant Director ordered respondent to pay for claimant's medical treatment. Respondent appeals alleging that the condition for which treatment is needed did not result from her employment with the respondent. Claimant raises a jurisdictional question as to whether respondent's appeal is subject to review by the Appeals Board.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The first issue that the Appeals Board will address is claimant's challenge to the jurisdiction of the Appeals Board to review this preliminary hearing Order. The facts in this case are not in dispute. On September 24, 1994 claimant injured her right hand at work. Injury resulted when claimant stuck her hand in a hole while cleaning the "allens" and a slide gate came down across her knuckles. She pulled her hand free and reported her injury to her supervisor, whereupon she was taken to the emergency room at St. Francis Hospital with complaints of swelling, tingling in the tips of her fingers and a contusion. Respondent does not dispute that claimant suffered injury at work nor the compensability of that accident. Respondent does challenge whether the carpal tunnel syndrome condition of which the claimant now complains, and for which she seeks medical treatment, is related to her accident.

The medical evidence relating the carpal tunnel syndrome to the particular September 24, 1994 accident is somewhat equivocal. On March 21, 1995 claimant was referred by respondent to Dr. Brad W. Storm. The medical evidence most favorable to the claimant's position is found in Dr. Storm's May 22, 1995, letter wherein he states:

"Ms. Calvaruso [*sic*] had some subclinical carpal tunnel syndrome prior to her injury at Frito Lay. The injury at Frito Lay with subsequent transient swelling could have been the 'straw that broke the camel's back' resulting in a symptomatic carpal tunnel syndrome. I don't believe the injury at Frito Lay could in and of itself cause carpal tunnel syndrome if no disease had been present prior to the injury."

It is apparent that Dr. Storm did not find a causal connection between the work-related injury and the subsequent diagnosis of carpal tunnel syndrome to be a probability, but instead offered it as a possibility. In that same May 22, 1995 letter to claimant's counsel, Dr. Storm also opined the following:

"I believe the key point in understanding this situation is understanding the position of the injury. The fingers were caught in a gate mechanism over the metacarpal heads, at the position of the 'knuckles.' All evidence of etiology for her numbness in her fingers is related to her carpal tunnel syndrome which, of course, is in the proximal palm. Considering that she has no specific complaints related to the area of her injury at the MP joints and has recovered quite well from this, there is no way that I can related [*sic*] a transient contusion to a more proximal nerve compression at the wrist. [A]natomically, one would be very hard pressed in explaining how she could develop carpal tunnel syndrome in her wrist from striking her fingers."

The medical evidence weighs heavily against claimant's position in this case. In proceedings under the Workers Compensation Act the claimant has the burden to prove by a preponderance of the credible evidence the various conditions upon which claimant's right depends. K.S.A. 44-501(a). See also Chandler v. Central Oil Corp., 253 Kan. 50, 853 P. 2d 649 (1993).

Claimant makes a strong argument against Appeals Board jurisdiction in this case where the situs of the condition for which claimant seeks treatment is located in close proximity to the situs of an admittedly compensable injury. However, the Appeals Board has in numerous previous decisions found that the question of whether a relationship exists between a work-related accident and a subsequent need for medical treatment relates both to the issues of nature and extent of disability and whether claimant's personal injury was sustained by accident arising out of and in the course of the employment. Therefore, the Appeals Board finds that it has the jurisdiction and authority to review this preliminary hearing Order under K.S.A. 44-534a. Having so found, the Appeals Board next concludes that the claimant has not met her burden of proving that her carpal tunnel condition results from or is directly traceable to the physical injury of September 24, 1994. There is insufficient evidence in the record as it now stands to find that the carpal tunnel syndrome condition is either a direct and natural consequence, or the result of a natural progression of the injury received in the admitted work-related accident.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the December 21, 1995 Order for Medical Treatment entered by Assistant Director Brad Avery

should be, and is hereby, reversed and set aside, and for purposes of this preliminary hearing the respondent is not responsible for the medical expenses incurred by claimant for treatment of her carpal tunnel syndrome condition.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John J. Bryan, Topeka, KS  
Steven J. Quinn, Kansas City, MO  
Brad Avery, Assistant Director  
Philip S. Harness, Director